

# EXHIBIT B

Your File No. 000013066430 // Your Insured: All Boro Rehab Construction Corp.

From: Wartick, Ryan J

Received: 1/21/2020 9:58:34 AM

To: Bethany Beckwith;

Cc:

Attachments: image003.png; 20170626103342.pdf

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Ms. Beckwith:

We received your tender letter on behalf of Arch and All Boro Rehab Construction Corp on December 23, 2019. Attached is our letter denying the tender of defense and indemnity which was previously sent to Arch on June 23, 2017.

Please review and let me know if you have any questions.

With Best Regards,

**Ryan Wartick | Claim Professional**

Northland / Northland Casualty / Northfield Insurance

385 Washington Street | Mail Code 9275-SB03N

St. Paul, MN 55102

W: 651.310.4755 F: 866.882.3589



../../../../Volumes/Designers%

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P.O. Box 64805  
St. Paul, MN 55164 - 0805

**Sent via Certified Mail and US Mail**

June 23, 2017

Arch Insurance  
Attn: Christine Dodge  
1299 Farnam Street, Ste. 500  
Omaha, NE 68102-1880

Re:	Our Insured:	Drexler Land Development Inc.
	Our Claim Number:	23 WH005942-02
	TIC #:	C5D2900
	Underwriting Company:	Northfield Insurance Company
	Date of Loss:	February 6, 2017
	Claimant:	Interiano, Juan Carlos
	Your Claim #:	L-099-1007431

Dear Ms. Dodge:

This letter acknowledges receipt of your tender of defense and indemnity on behalf of All Boro Rehab Construction Corp in the matter of **Juan Carlos Interiano v. All Boro Construction Group, Inc., Jonathan Hoch and Henna Hoch**, venued in Queens County, New York. This claim was referred to us for consideration under Policy WS281789, issued to Drexler Land Development Inc. ("Drexler") for the policy period of May 29, 2016 to May 29, 2017. This policy provides Commercial General Liability Coverage. The purpose of this letter is to inform you that after a careful review of the policy this claim is not covered and we must respectfully deny your tender. The reasons for this are set forth below.

Our investigation indicates that the Plaintiff was injured while working at 72-72 141<sup>st</sup> Street, Flushing, New York. An excavator rolled over Plaintiff's foot causing injury while grading the backyard. Jonathan Hoch and Henna Hoch ("the Hochs") owned the premises. All Boro Construction Group, Inc. ("All Boro") acted as the general contractor for the project. Plaintiff was an employee of Drexler at the time of the incident.

Please refer to that portion of the policy titled **COMMERCIAL GENERAL LIABILITY COVERAGE FORM, CG 00 01 (12/07)**, as modified in **NEW YORK CHANGES COMMERCIAL GENERAL LIABILITY COVERAGE FORM, CG 01 63 (4/09)** under **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, which states<sup>1</sup>:

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<sup>1</sup> The policy also provides Coverage B "Personal and Advertising Injury" coverage. Because this claim does not even potentially allege "personal and advertising injury," we have not addressed that coverage

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## 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. ...

## 2. Exclusions

This insurance does not apply to:

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay as damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement...

I further direct your attention **CONTRACTUAL LIABILITY LIMITATION ENDORSEMENT, CG 21 39 (10/93)**, which states:

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the DEFINITIONS Section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises;
- b. A sidetrack agreement;

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in this letter. However, if you would like a more detailed discussion of why that coverage does not apply, please let us know and we will provide you with a more detailed analysis of that coverage.

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- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with the work for a municipality;
- e. An elevator maintenance agreement.

There is no coverage under the policy for the contractual liability claim being made against Drexler by the Hochs and All Boro based upon the contractual liability exclusion and the contractual liability limitation quoted above.

We now refer you to endorsement **S2774-CG (7/07)**, entitled **BLANKET ADDITIONAL INSURED (CONTRACTORS) (Excludes Products-Completed Operations)**, which states:

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

1. **WHO IS AN INSURED - (SECTION II)** is amended to include any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:
  - a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
  - b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.
2. The insurance provided to the additional insured by this endorsement is limited as follows:
  - ...
  - c. The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard".
  - ...
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a

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primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that other insurance. But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such other insurance.

5. The following definition is added to the **DEFINITIONS** section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

The policy defines "product-completed operations hazard" and "your work" as:

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed.
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

...

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; ...

**22. "Your work":**

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and

(2) The providing of or failure to provide warnings or instructions.

Based on the foregoing, the Hochs and All Boro would qualify as additional insureds under this endorsement, but only to the extent that, the injury or damage is caused by acts or omissions of Drexler or Drexler's subcontractor in the performance of their work to which the "written contract requiring insurance" applies. Furthermore, the Hochs and All Boro do not qualify as an additional insured with respect to their independent acts or omissions.

Despite, their status as additional insureds coverage is barred by the following exclusions.

Next please refer to that portion of the policy titled **COMMERCIAL GENERAL LIABILITY COVERAGE FORM, CG 00 01 (12/07)**:

**2. Exclusions**

This insurance does not apply to:

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any



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similar law.

To the extent you have any obligation to pay any workers' compensation, disability benefits or any similar obligation, exclusion **d. Workers Compensation And Similar Laws** applies to preclude coverage.

Please next refer to **EXCLUSION – EMPLOYERS LIABILITY, S2689-CG (10/08)**, which states:

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

- A. The following replaces Exclusion **e. Employer's Liability** in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**e. Employer's Liability**

"Bodily injury" to:

- (1) Any "employee" of the named insured arising out of and in the course of:

- (a) Employment by the named insured; or
- (b) Performing duties related to the conduct of the named insured's business; or

- (2) The spouse, child, parent, brother, sister or relative of that "employee" as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity.
- (2) To any obligation to share damages with or repay someone who must pay damages because of the injury.
- (3) To any liability assumed by the insured under any contract or agreement.

To the extent the claimed "bodily injury" is to an "employee" of the named insured arising out of and in the course of employment with the named insured or performing duties related to the conduct of the named insured's business, exclusion **e.**, Employer's Liability applies to preclude coverage.

Please next refer to **EXCLUSION – INJURY TO EMPLOYEES, WORKERS OR CONTRACTED PERSONS OF INSURED OR CONTRACTED ORGANIZATIONS, S94-CG (4/14)**, which states:

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This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

1. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

**Bodily Injury To Employees, Workers Or Contracted Persons Of Insureds Or Contracted Organizations**

This insurance does not apply to "bodily injury" to:

- (1) Any person who is an "employee", "leased worker", "temporary worker" or "volunteer worker" of you or any insured arising out of and in the course of:
  - (a) Employment by you or any insured; or
  - (b) Performing duties related to the conduct of your or any insured's business;
- (2) Any person who contracted with you or with any insured for services arising out of and in the course of performing duties related to the conduct of your or any insured's business;
- (3) Any person who is employed by, is leased to or contracted with any organization that:
  - (a) Contracted with you or with any insured for services; or
  - (b) Contracted with others on your behalf for services;arising out of and in the course of employment by that organization or performing duties related to the conduct of that organization's business; or
- (4) The spouse, child, parent brother or sister of any of those persons as a consequence of the "bodily injury" described in paragraphs (1), (2) or (3) above.

For the purposes of this exclusion, contracted with includes contracting with an oral or written contract.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity;  
and

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- (2) Whether the insured may have any obligation to share damages with or pay damages because of the injury

Your policy defines "employee" as:

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

Your policy defines "leased worker" as:

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

Your policy defines "temporary worker" as:

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions

Your policy defines "volunteer worker" as:

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

To the extent the Plaintiff is an "employee", "leased worker", "temporary worker", "volunteer worker" who was injured arising out of employment with the named insured, or performing duties related to your conduct or the conduct of any other insured's business, **section 1 of endorsement S94-CG Bodily Injury To Employees, Workers Or Contracted Persons Of Insureds Or Contracted Organizations** applies to preclude coverage. To the extent the Plaintiff contracted with the named insured or any other insured for services and was injured while performing duties related to the conduct of the named insured or any insured's business, **section 2 of endorsement S94-CG** applies to preclude coverage. To the extent the Plaintiff is any person who is employed by, is leased to or contracted with any organization that contracted with the named insured or with any insured for services; arising out of and in the course of employment by that organization or performing duties related to the conduct of that organization's business, **section 3 of endorsement S94-CG** applies to preclude coverage.

Please next refer to **LIMITATION – CLASSIFICATION, S17-CG (7/09)**, which states:

This endorsement modifies insurance under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PROVISIONS

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**A. The following is added to Paragraph 1.b., Insuring Agreement of SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

This insurance applies to "bodily injury" and "property damage" caused by only those operations which are classified and shown on the Commercial General Liability Coverage Declarations, its endorsements, and supplements.

Please also refer to **COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS, S2584D-CG (9/07)**, which states:

PREMIUM								
Loc. #	Classification	Code No.	Premium Base	Rate		Advance Premium		
				Pr/CO	All Other	Pr/CO	All Other	
001	Driveway, Parking Area or Sidewalk - paving or repaving	92215	p	147,200	14.343	35.994 \$	2,111.00	\$ 5,298.00
002	Driveway, Parking Area or Sidewalk - paving or repaving	92215	p	12,800	14.849	57.435 \$	190.00	\$ 735.00
	Blanket Additional Insureds -		Fully Earned		Flat Chrg \$		\$	814.00

Because the damages being claimed against you did not arise out the "Driveway, Parking Area or Sidewalk – paving or repaving" classifications, endorsement **Limitation - Classification S17-CG (07/09)** applies to preclude coverage.

Because there is no coverage, we are unable to handle this matter on your behalf or pay any sums you may be legally obligated to pay. You are invited to provide any additional information that you believe would support our acceptance of coverage.

Neither this letter nor Northfield's investigation of these matters shall be construed as an admission of liability or as a waiver of any coverage defense or limitation that is available to Northfield, pursuant to the provisions of its insurance policies or by operation of law. In addition to the policy defenses discussed above, other defenses may be available to Northfield by operation of law. Northfield reserves any legal and policy defenses it may have in connection with these matters whether stated or not in this letter. Finally, Northfield reserves the right to modify its coverage position at any time upon receipt of additional information.

If you have any questions regarding our position on coverage, please contact me at the number below.

Sincerely,

Ryan J. Wartick  
Northfield Insurance Company  
Phone: 651-310-4755  
Fax: 866-882-3589  
E-Mail: [rjwartic@northlandins.com](mailto:rjwartic@northlandins.com)

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cc: Bass Underwriters, Inc.  
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